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5 **BEFORE THE PUBLIC DISCLOSURE COMMISSION**
6 **OF THE STATE OF WASHINGTON**

7 IN RE THE MATTER OF ENFORCEMENT
8 ACTION AGAINST

9 National Education Association

10 Respondent.
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12

PDC CASE NO. 02-282

ORDER OF REFERRAL
TO THE WASHINGTON STATE
ATTORNEY GENERAL'S
OFFICE

13 **INTRODUCTION**
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15 On January 31, 2002, the Evergreen Freedom Foundation (EFF) and individuals filed a
16 citizen action letter, pursuant to RCW 42.17.400, with the Office of the Attorney General
17 alleging that the National Education Association (NEA) violated RCW 42.17.040, 42.17.680,
18 and 42.17.760. The Attorney General's Office forwarded the letter to the Public Disclosure
19 Commission for investigation on February 6, 2002. Specifically, EFF alleged that the NEA
20 violated:

- 21 • RCW 42.17.040 by failing to register and report its Ballot Measure/Legislative Crisis and
22 Media Campaign fund as a political committee;
23 • RCW 42.17.680 by diverting a portion of employees' wages or salaries for contributions
24 to political committees or for use as political contributions without the written
25 authorization of the employees; and
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- RCW 42.17.760 by using agency shop fees to make contributions or expenditures to influence an election or to operate a political committee without authorization from the employees.

This matter was originally scheduled to be heard by the Commission at its April 9, 2002 Commission meeting. On April 8, 2002, EFF filed its lawsuit against the NEA in Thurston County Superior Court alleging violations of RCW 42.17.760. As a result, the Commission took no action at its April 9, 2002 meeting.

On August 23, 2002, Thurston County Superior Court Judge Paula Casey dismissed the lawsuit filed by EFF against NEA. Judge Casey's dismissal was based on a decision by the WA State Court of Appeals in State ex rel. Evergreen Freedom Foundation v Washington Education Association, No. 25272-4-II, where the court stated that "Before the 10-day period¹ had passed after EFF's second letter to the AG, the AG forwarded the allegations to the PDC for investigation...Because the AG acted before the end of the 10-day period, EFF could not bring a citizen's action lawsuit under RCW 42.17.400..."

At a special meeting held in Hearing Room 2 of the John A. Cherberg Building, Olympia, WA, on October 2, 2002, the Commission reviewed the Report of Investigation, the Exhibits to the Report of Investigation, and the Staff Report regarding EFF's allegations. Susan Harris, Assistant Director representing Staff, presented the Commission with an oral summary of the findings and alleged apparent violations by the NEA. Richard Wilkof, Counsel to the NEA, orally responded to the allegations.

Chair Michael Connelly, Vice Chair Susan Brady, Commissioner Christine Yorozu, Commissioner Francis Martin, and Commissioner Lois Clement were present and participated.

¹ RCW 42.17.400 states: "The citizen action may be brought only if the attorney general...ha(s) failed to commence an action hereunder within forty-five days and after such notice and such person has thereafter further notified the attorney general...that said person will commence a citizen's action within ten days upon their failure to do so..."

1 Following the oral presentations by Staff and Counsel for the NEA, and consideration of the
2 materials submitted by Staff, and after deliberation, the Commission directed the following:

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4 **ORDER OF REFERRAL**

5 By a unanimous vote, the Commission dismissed the allegations that NEA violated RCW
6 42.17.040 and 42.17.680.

7 By a unanimous vote, the Commission found multiple apparent violations of RCW
8 42.17.760 by the NEA when it used agency shop fees to make contributions or expenditures to
9 influence an election or to operate a political committee without authorization from the
10 employees. The Commission found that given the insufficiency of its penalty authority, in lieu of
11 holding an enforcement hearing, the Commission hereby refers the above referenced apparent
12 violations to the Washington State Attorney General's Office for appropriate action pursuant to
13 RCW 42.17.360 and .395 and WAC 390-37-100.

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18 Vicki Rippie, Executive Director

Date Signed

19 *Copies to be provided to:*
20 Linda A. Dalton, Senior Assistant Attorney General
Counsel for Commission Staff
21 Nancy Krier, Assistant Attorney General
Counsel for Commission
22 Richard Wilkof,
Counsel for NEA
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